

No. 15385

In the
United States Court of Appeals
For the Ninth Circuit

DICK LEE EVANS,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Petition for Rehearing

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Comes now the appellant, by his attorney, and files this his Petition for Rehearing of Judgment entered by the Court on February 24, 1958, affirming the judgment of the court below.

Appellant reserves his argued position as to each of the points of appeal, but in this petition addresses himself solely to certain features of the decision wherein he believes the Court may be convinced its opinion is incorrect.

THE RULE REQUIRING EXHAUSTION OF ADMINISTRATIVE REMEDIES SHOULD BE RELAXED IN THIS INSTANCE.

Such a holding would have support in this Court's *Davidson* decision.

It will be recalled that Evans appealed his first I-A classification, but did not appeal the second I-A.

Petitioner's reclassification (in the same Class, I-A) was not the result of any new evidence, but (as the Court relates on page 2 of the slip opinion) because it was believed by the Selective Service System that the *Gonzales* decision required a reprocessing.

A study of the "new" material placed in the file after the reopening of the classification, compared with the material that formed the basis for the original I-A classification shows that nothing new was added. The sheets of paper were new to the file, but the writing on the said sheets added no new content whatsoever.

This is exactly parallel to the *Davidson* situation, where this Court declared:

"The record submitted to the appeal board contained nothing new which could affect its prior decision." (611-612 of 218 F. 2d.)

The merits of petitioner's case should be considered. He should not be foreclosed by a strict construction of the harsh "exhaustion" rule.

Wherefore, upon the foregoing grounds, and for other reasons appearing in Appellant's Brief, it is respectfully urged that a rehearing be granted in this matter, and that the mandate of this Court be stayed pending the disposition of this petition.

Counsel further represents and certifies: In counsel's judgment this Petition is well founded and is not interposed for delay.

J. B. TIETZ,
Attorney for Appellant.

